

TAB #3

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February 12, 2002

BY HAND

William Caton, Acting Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*
In the Matter of Performance Measurements and Standards for Interstate
Special Access Services, CC Docket No. 01-321

Dear Mr. Caton:

On February 12, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Chairman Powell, urging the Commission to adopt an enforcement plan providing remedies for poor or discriminatory special access provisioning and maintenance by Tier 1/Class A incumbent local exchange carriers.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter and attachments are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

A. Richard Metzger, Jr.

Attachments

cc: Chairman Powell (w/o attachments)

February 12, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Suite TW-A325
Washington, D.C. 20554

Re: Joint Competitive Industry Group Proposal Regarding
Essential Elements of a Special Access Provisioning Enforcement Plan _____

Dear Chairman Powell:

On January 22, 2002, the undersigned competitive telecommunications carriers, trade associations and the eCommerce & Telecommunications Users Group (eTUG) (the "Joint Competitive Industry Group") wrote to you, urging that the Commission adopt performance measures, performance standards, and reporting requirements to govern the provision of special access services by incumbent local exchange carriers (LECs). The comments filed on January 22, 2002 demonstrate that facilities-based competitive carriers rely on special access services provided by incumbent LECs to offer the high bandwidth services vital to business customers, and that these "last mile" links are critical to the development of facilities-based competition for local services. The comments also provide overwhelming support for adoption of the measures, standards and reporting requirements proposed by the Joint Competitive Industry Group, applicable to the provision of all interstate special access services by Tier 1/Class A incumbent LECs, including those services provided to the incumbent LECs' interexchange affiliates and retail customers.

The measures, standards and reporting requirements proposed by the Joint Competitive Industry Group are likely to induce better performance by incumbent LECs in the ordering, provisioning, maintenance, and repair of special access services. Requiring incumbent LECs to report on their performance to their affiliates, competitors and retail customers also will deter discrimination, as well as allowing the Commission more easily to assess the validity of allegations of unreasonable discrimination against competitors or other customers.

If the reporting requirements reveal that any incumbent LEC is engaging in unjust or unreasonable practices, or unreasonable discrimination, in violation of Sections 201 and 202 of the Communications Act, 47 U.S.C. §§ 201-202, the Commission should be prepared to take swift, effective and certain enforcement action, sufficient to deter anti-competitive behavior on the part of the incumbent LECs. To this end, the Joint Competitive Industry Group offers the attached Essential Elements of a Special Access Provisioning Enforcement Plan (Attachment A), a unified competitive industry and user group view regarding remedies for poor or discriminatory special access provisioning.

Chairman Powell
February 12, 2002
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The Joint Competitive Industry Group urges the Commission to adopt the Group's proposal regarding enforcement, as well as its proposed performance metrics and installation intervals.

Sincerely,

The Joint Competitive Industry Group

Robert W. Quinn, Jr.
Federal Government Affairs Vice President
AT&T Corp.

Kelsi Reeves
Vice President – Federal Government
Relations
Time Warner Telecom

Rebecca H. Sommi
Vice President Operations Support
Broadview Networks

Donna Sorgi
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John Windhausen, Jr.
President
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Paul Kouroupas
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Group**

Jake E. Jennings
Vice President – Regulatory Affairs
NewSouth Communications

Chairman Powell
February 12, 2002
Page 3

Attachment

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Dorothy Attwood
Jeffrey Carlisle
Michelle Carey
Uzoma Onyeije
William Caton

ATTACHMENT A

Joint Competitive Industry Group Proposal

Essential Elements of a Special Access Provisioning Enforcement Plan

General

1. Remedies should include both payments to special access customers of the incumbent local exchange carriers (LECs) and forfeitures paid to the United States Treasury
2. Penalties must be of a magnitude sufficient to deter anti-competitive behavior
3. Penalties should increase with the magnitude of the performance failure
4. Penalties should increase for repeated performance failure
5. The Commission should state that any remedies specific to special access provisioning are in addition to the normal complaint process and any private remedies that customers may have

Payments to Customers of Incumbent LECs

6. Customers of incumbent LECs should be able to exercise any or all of the following options with respect to payments to customers
 - a. Self-executing payments to customers, consistent with the Commission's authority
 - b. Seek damages by filing a complaint at the FCC or in district court. The Commission should establish a streamlined process for complaints alleging that an incumbent LEC has failed to comply with the special access performance standards or parity requirements.

Forfeitures

7. The Commission should establish a standard methodology for calculating proposed forfeitures. Forfeiture amounts should be sufficiently high to serve as a deterrent to anti-competitive behavior, rather than simply a cost of doing business
8. The Commission should establish a streamlined process for imposing forfeitures

Non-monetary penalties

9. For significant abuses of the performance requirements, the Commission should establish non-monetary penalties, such as suspension of Section 271 or pricing flexibility authority, and injunctive relief requiring the incumbent LEC to improve its performance

Audits

10. Each incumbent LEC should be required to undergo an annual independent audit of its performance reporting, the auditor to be chosen by the FCC, but paid by the incumbent LEC
11. Competitive carriers, at their option, should have the right to audit the incumbent LECs' performance reports. The requesting carrier would pay for the audit, unless the audit reveals inaccuracies in the incumbent LEC's report, in which case the incumbent LEC would pay for the audit

Special Task Force

12. The Commission should establish a special enforcement team to focus on special access performance, similar to the BA-NY anti-backsliding team

TAB #4

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June 18, 2002

ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Suite TW-A325
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*
In the Matter of Performance Measurements and Standards for
Interstate
Special Access Services, CC Docket No. 01-321

Dear Ms. Dortch:

On June 18, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Chairman Powell, urging the Commission to adopt an enforcement plan providing remedies for poor or discriminatory special access provisioning and maintenance by Tier 1/Class A incumbent local exchange carriers.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,


Ruth Milkman

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Dorothy Attwood
Jeffrey Carlisle
Michelle Carey
John Stanley
Uzoma Onyeije

June 18, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Suite TW-A325
Washington, D.C. 20554

Re: Joint Competitive Industry Group Proposal Regarding
Special Access Provisioning Remedies

Dear Chairman Powell:

On February 12, the undersigned competitive telecommunications carriers, trade associations and user groups (the "Joint Competitive Industry Group") wrote to you, urging that the Commission adopt performance measures, performance standards, and reporting requirements to govern the provision of special access services by incumbent local exchange carriers. The Joint Competitive Industry Group also noted that the Commission should be prepared to take swift, effective and certain enforcement action, and offered "Essential Elements of a Special Access Provisioning Enforcement Plan," a unified competitive industry and user group view regarding remedies for poor or discriminatory special access provisioning.

The Joint Competitive Industry Group continues to support that plan, and writes today to amplify the discussion of two points of the Enforcement Plan, Point 6 (Payments to Customers) and Point 8 (Forfeitures). The Commission can promote swift, effective and certain enforcement by providing for: (1) service credits; (2) an expedited complaint process; and (3) a streamlined forfeiture process; as described in Attachment A to this letter. The proposals contained in Attachment A do not affect a customer's right under the statute to seek damages or injunctive relief either at the Commission or in federal court or to pursue any other private remedy.

The three proposals (service credits, expedited complaint process, and streamlined forfeiture process) are complementary. Service credits and complaints would result in payments to individual customers, while the forfeiture process would result in payment to the U.S. Treasury. Service credits are designed to ensure that customers do not pay the full price for substandard special access service. If the customer's damages exceed the amount of the service credit, the customer may use the expedited complaint process to collect damages quickly and without extensive litigation costs. The expedited complaint process is designed to provide swift and sure compensation for customers, based on information from the carrier itself. The streamlined forfeiture process is intended to penalize incumbent LECs for violations of the Communications Act, and to enhance their incentives to provision special access in a reasonable and non-discriminatory manner. As explained in our February 12 proposal, the Joint Competitive Industry Group believes these measures could reasonably be limited to only Tier 1 incumbent LECs, and not applied to smaller incumbent LECs.

The Joint Competitive Industry Group urges the Commission to adopt the Group's proposal regarding remedies, as well as its proposed performance measures, performance standards and reporting requirements.

Sincerely,

The Joint Competitive Industry Group

Douglas Jarrett
Keller & Heckman
American Petroleum Institute

Richard J. Metzger
Vice President – Regulatory and Public Policy
Focal Communications Corporation

John Windhausen, Jr.
President
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Jake E. Jennings
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Ecommerce & Telecommunications Users Group

Attachment

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin

Dorothy Attwood
Jeffrey Carlisle
Michelle Carey

John Stanley
Marlene Dortch
Uzoma Onyeije

ATTACHMENT A

Joint Competitive Industry Group Proposal

Payments to Customers of Incumbent LECs And Forfeitures

Payments to Customers of Incumbent LECs

- Payments would take the form of service credits, damages, or both.

Service Credits

- Service credits are designed to ensure that customers do not pay full price for substandard service.
- Section 205 gives the Commission broad authority to compel incumbent LECs to incorporate automatic service credits for poor or discriminatory performance into their interstate special access tariffs and their carrier-to-carrier special access contracts.
- To avoid the prolonged process of suspending and investigating each incumbent LEC tariff after it is filed, the Commission should establish the specific terms that incumbent LECs must include in their tariffs and contracts.
- The tariff and contract terms prescribed by the Commission would correspond to the measures, standards, disaggregation levels, and exclusions set forth in the JCIG Proposal.
- At a minimum, for each measure in the JCIG Proposal, the tariff or contract term should take into consideration:
 - (for measures with a parity standard) how the credit will be calculated, with the level of credit escalating based upon the relationship between the incumbent LEC's performance for the customer versus the incumbent LEC's performance to itself, its affiliates, or its retail customers (*e.g.*, a credit equal to X for performance that is Y worse than parity with the incumbent LEC's retail performance, with X increasing as Y increases); or
 - (for measures with a benchmark standard) how the credit will be calculated, with the level of credit escalating based upon the degree of deviation between the incumbent LEC's performance and the established benchmark (*e.g.*, a credit equal to X for performance that is Y worse than the benchmark, with X increasing as Y increases)
- Depending on the metric, the credit would be applied against the recurring or non-recurring charge, as appropriate, for the particular reporting period.
- The credit would be applied separately to each disaggregated service level (*e.g.*, DS0, DS1, etc.) for each measure as reported by the incumbent LEC.

- No matter how many separate standards were violated, the cumulative credit applicable to any given facility or service would be no more than 100% of the tariffed or contract charge for that facility or service.

Expedited Complaint Process

- The expedited complaint process is intended to compensate customers for damages incurred, without involving extensive litigation costs.
- Performance standards or parity benchmarks that an incumbent LEC misses for services provided to an individual customer would be flagged in customer-specific reports.

Liability Phase

- In the liability phase, a customer would file a form complaint with the FCC specifying the incumbent LEC at issue; the month during which the violation occurred; the performance standard or parity benchmark that was missed; and the number of circuits involved.
 - The customer would serve the complaint simultaneously on the incumbent LEC and the Commission.
 - The incumbent LEC would have 10 days to answer.
 - The customer would have 7 days to respond to the incumbent LEC's answer.
- Identification of a missed performance standard or benchmark would establish a rebuttable presumption that a violation of the Act and/or the Commission's rules has occurred. This rebuttable presumption would shift the burden of production to the incumbent LEC to demonstrate that it has not violated the statute or the Commission's rules.
 - The incumbent LEC would bear the heavy burden of submitting evidence sufficient to overcome the rebuttable presumption and avoid a finding of liability.
 - Absent a *force majeure* event shown to have caused the incumbent LEC to miss the benchmark standard or parity standard, the Commission would find that the incumbent LEC has violated the Commission's rules and the statute.
- The Commission would issue an order resolving the liability issue within 30 days of the incumbent LEC's answer.

Damages Phase

- Once the incumbent LEC's liability has been established, the customer would file a statement of damages, based either on its own calculations or as defined by a proxy schedule developed by the Commission.
- The incumbent LEC would have a brief opportunity to comment on the statement of damages.

- The Commission would award damages promptly.
- If appropriate, the amount of the damages the incumbent LEC is required to pay would be reduced by the amount of service credits the customer previously received.

Forfeitures

- The forfeiture process is intended to penalize incumbent LECs and to enhance their incentives to provision special access in a reasonable and nondiscriminatory manner.

Streamlined Forfeiture Process

- Incumbent LECs would provide aggregate and customer-specific monthly performance reports.
 - Aggregate reports would indicate whether any benchmark standards or parity standards have been missed for any class of customer (e.g., provisioning for unaffiliated IXCs is slower than for affiliated IXCs).
- If one or more metrics have been missed, the Commission, within 7 days, would automatically issue a notice of apparent liability ("NAL") and an order to show cause.
 - The NAL would identify each missed standard and each instance of discriminatory treatment both by class of customers and by circuit type.
 - The NAL also would propose a specific penalty for each missed standard.
 - The order to show cause would direct the incumbent LEC to demonstrate why: (a) the Commission should not find that the incumbent LEC has violated the Commission's rules and the statute; and (b) the incumbent LEC should not be required to come into compliance with the Commission's performance requirements within 30 days.
- The incumbent LEC would have 15 days to respond to the NAL, and customers would have 7 days to comment on the incumbent LEC's response.
- The incumbent LEC would bear the burden of demonstrating by clear and convincing evidence that its poor or unreasonably discriminatory performance was justified.
 - Absent a *force majeure* event shown to have *caused* the incumbent LEC to miss the benchmark standard or parity standard, the Commission would find that the incumbent LEC has violated the Commission's rules and the statute.
- Within 30 days of the incumbent LEC's response to the NAL, if the incumbent LEC has not been able to overcome the presumption of liability with clear and convincing evidence of justification, the Commission would issue an order finding that the incumbent LEC has violated the Commission's rules and the Communications Act, and that it must pay the prescribed forfeiture to the U.S. Treasury.

TAB #5

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June 18, 2002

BY ELECTRONIC FILING


Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*
In the Matter of Performance Measurements and Standards for Interstate
Special Access Services, CC Docket No. 01-321

Dear Ms. Dortch:

On June 18, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Dorothy Attwood in this docket. Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), a copy of the letter and attachments are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,


Ruth Milkman

Attachments

cc: Dorothy Attwood
Jeffrey Carlisle
Michelle Carey
John Stanley
Uzoma Onyeije

June 18, 2002

Dorothy Attwood
Chief, Wireline Competition Bureau
Federal Communications Commission
Washington, DC 20554

Re: Joint Competitive Industry Group Proposal Regarding
Performance Metrics for Interstate Special Access Services

Dear Ms. Attwood:

On January 22, 2002, the Joint Competitive Industry Group (JCIG) urged the Commission to adopt a set of Performance Measurements & Standards applicable to the provision of all interstate special access services by Tier 1/Class A incumbent LECs. In a subsequent meeting, the Wireline Competition Bureau requested that the JCIG provide the Commission with additional information regarding the measurements and associated business rules. The Bureau asked that the JCIG discuss the problem that each measurement is designed to address; the business impact of the problem; the manner in which the measurement solves the problem; and the burden on the reporting incumbent LEC. The attached summary (Attachment A) addresses each of these questions.

In addition, during the months that have passed since the JCIG asked the Commission to adopt Performance Measurements & Standards, the Minnesota and Tennessee state commissions have adopted performance measurements for special access services that are very similar to the JCIG proposal. *See In the Matter of Qwest Wholesale Service Quality Standards*, Before the Minnesota Public Utilities Commission, Docket No. P-421/M-00-849, Order Setting Reporting Requirements and Future Procedures (March 4, 2002) (Attachment B); Order Denying Reconsideration and Modifying Order On Own Motion (May 29, 2002) (Attachment C); *In Re Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, Tennessee Regulatory Authority, Docket No. 01-00193, Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms (May 14, 2002) (Attachment D). Copies of the TRA and Minnesota PUC orders are enclosed, for your convenience.

Dorothy Attwood
Page 2

The Joint Competitive Industry Group believes that the information provided today supplements the record in a way that should facilitate the Commission moving forward expeditiously to adopt the Group's proposals regarding performance measures, standards and reporting requirements.

Sincerely,

The Joint Competitive Industry Group

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American Petroleum Institute

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Attachments

cc: Jeffrey Carlisle
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ATTACHMENT A

Joint Competitive Industry Group Origin of Metrics

ORDERING

The Ordering measures cover the important first step in the special access provisioning process. This includes the ILEC's response to an Access Service Request (ASR) issued by the competitor, where the ILEC provides the due date on which they expect to provision the service--the Firm Order Confirmation (FOC) date.

General Business Rules or Exclusions:

Projects are included in these measures as the ILECs should be able to provide FOC Due Dates for projects in a timely manner. ILECs also have varying rules and levels for determining what constitutes a "project." To exclude projects could mean that a significant volume of ASRs would not be measured at all.

"Unsolicited FOCs," that is, changes to the FOC Due Date that are initiated by the ILEC without a request from the competitor, as well as "cancelled ASRs", and "record ASRs" are also excluded from these measures.

FOCs for "disconnect ASRs" are also excluded because these service requests are usually easily addressed by the ILECs in the normal course of business and are not customer-affecting. Including disconnect ASRs in the ordering metrics would skew the results.

JIP-SA-1 FOC RECEIPT

Problem: ILECs have taken excessive amounts of time to respond to clean ASRs, with average response at times as high as 10 or more business days. And, in some instances, ILECs do not perform a facilities check prior to issuing the FOC.

Business impact: FOCs provide the due date on which the requested circuit(s) will be installed. Therefore, competitors cannot inform customers when their service will be installed until they receive a FOC from the ILEC. Late or delayed FOCs prevent carriers and customers from planning the installation process and frustrate customers--especially when they are requesting service within a reasonable period of time. The competitors' retail customers (particularly large business or institutional users) must coordinate personnel, resources and third-party vendors to make certain that the installation occurs

efficiently on the due date, and cannot do so until the date is confirmed. Business customers have also reported that they have received faster notification when ordering directly from the ILECs.

Proposed measurement as a solution: This measurement will ensure that FOC Due Dates are being provided in a timely manner, and if not, identify that there is a problem that needs to be addressed. The performance standard requires the submission of FOCs for DS0 or DS1 circuits within 2 business days and DS3 circuits within 5 business days of the submission of a "clean" ASR at least 98% of the time--thus requiring the ILEC to act promptly to provide installation dates that can be passed on to the end-user customer. Because it is anticipated that the ILEC will, at minimum, conduct an electronic facilities check, the due date it provides should be a reliable one, unless facility problems are encountered on the plant test date (PTD). The performance standard provides the ILECs sufficient time to ensure that the FOC accurately reflects the results of ILEC's facilities check. Moreover, each FOC received from the ILEC is accounted for in the metric, including those that are issued as a result of supplemental ASRs.

The diagnostic "FOC Receipt Distribution" is meant to show the number of days (*i.e.*, 0 days, 1 day, 2 days, through 10 days, and greater than 10 days) that have elapsed from the date the clean ASR is sent to the ILEC until the date the FOC is received in order to show the overall pattern and identify any developing problems.

A separate diagnostic records ASRs withdrawn at the ILEC's request because of lack of facilities or other reasons. This highlights those situations where the ILEC requests that an ASR be withdrawn, as these ASRs would then not be captured in any measure.

Reason not burdensome: Most BOCs already voluntarily provide reporting on FOC receipt to some competitors, often within intervals comparable to, or shorter than, the JCIG's proposed standard. Moreover, ILEC systems already capture this information for the ILECs' own use, at least for retail services. The JCIG proposal merely standardizes this process for the industry.

JIP-SA-2 FOC RECEIPT PAST DUE

Problem to be addressed: The JIP-SA-1 FOC Receipt measure tallies the FOCs that are returned, while this measure--FOC Receipt Past Due--tracks "clean" ASRs that have been sent to the ILEC but have not received a response or FOC, as of the end of the reporting period. The result is expressed as a percentage of the total number of ASRs sent during the reporting period. Experience has shown that issues with ILEC work-load, staff reductions, or other problems, can mean that ASRs simply are not replied to and without this measure these problems will go undetected, causing an obvious impact on the competing carrier's customers and the competing carrier's reputation.

Business impact: Competitors and business users must have a means of determining when ASRs are not being responded to before the problem becomes chronic or reaches

unacceptably high levels. The inability to access FOCs in a timely manner affects competitors' ability to meet end-user expectations. Past due FOCs often result in individual case escalations which are burdensome and resource-draining for both competitors and ILECs.

Proposed measurement as a solution: This measure will ensure that any outstanding FOCs are kept at manageable levels, and will, at a minimum, help identify instances when backlogs are developing or increasing, so that action can be taken to resolve problems well before they become a major concern for both competitors and business end users.

The expectation is that less than 2% of FOCs, without an open query/reject, should be past due and that the ILECs would report whether those FOCs are 1-5 days late, 6-10 days late, etc. The business rules have been designed to ensure that situations beyond the ILEC's control, such as ASRs that have been rejected, or queried, or where clarification has been requested, are not counted. A separate diagnostic measure of those "with open Query/Reject" is included to ensure that the number of these open FOCs are visible to both the ILEC and the ordering CLEC.

Reason not burdensome: These requirements should not be burdensome, as the actual query or reject may be electronic and, even if it is manual, the ILEC's system will normally have a status indicator with a flag showing that the ASR is waiting on a response from the competitor.

JIP-SA-3 OFFERED VERSUS REQUESTED DUE DATE

Problem to be addressed: Competitors submit ASRs requesting a specific date for installation of special access facilities, however, even when the requested due date is equal to or greater than the ILEC stated standard interval, the ILECs often ignore the requested due date and simply respond with a generic or system-generated date, putting the competitor in the position of appearing confused or disorganized to its customer.

Business impact: In order to compete effectively with the ILECs, competitors must be in a position to negotiate due dates up front with customers with a high degree of confidence that the dates negotiated will indeed be agreed to by the ILECs provisioning the service. However, due to existing ILEC systems, it often is impossible to order facilities more than 30 days prior to the requested due date. Therefore, competitors have a very short window in which to provide end-user customers with a specific date and time for their installation and to align customer needs with the availability of facilities.

Proposed measurement as a solution: This measure tracks only those ASRs where the requested due date is equal to or greater than the ILEC's standard interval. The measurement assumes that the ILEC will check its existing workforce and load balance on the requested date and offer to install facilities in accordance with the JCIG proposed 7-day installation interval for DS0s and DS1s and the 14-day installation interval for DS3s.

Under this metric, therefore, the date offered by the ILECs for the installation interval should be the same as the customer requested due date for installation 100% of the time.

The measure includes a diagnostic that shows how many days the ILEC's offered due date exceeds the customer requested due date.

Reason not burdensome: This measure simply compares two dates, the Requested Due Date and the Offered Date (FOC Due Date). Both dates should be readily available in the ILEC's provisioning system.

PROVISIONING

Provisioning measurements cover the ILEC's performance with respect to meeting the FOC Due Date. These measures provide a complete picture of the provisioning activity, and show whether service is being provided in a timely and quality manner. The five (5) provisioning measures demonstrate:

- whether the service is completed on time;
- when the service is completed late, how late;
- how long on average it takes the ILEC to install the service;
- whether there are uncompleted circuits that are past due; and
- how many circuits experience trouble within the first 30 days of installation.

General Business Rules or Exclusions:

"Projects" are included in these measures because the ILECs should be held responsible to meet the FOC Due Dates that they have provided (typically as a result of negotiations) for projects. ILECs also have varying rules and levels for determining what constitutes a project. To exclude projects could mean that a significant volume of circuits or ASRs would not be measured at all.

"Unsolicited FOCs," that is, changes to the FOC Due Date that are initiated by the ILEC without a request from the competitor, "cancelled ASRs," and "record ASRs" (*i.e.*, ASRs that are sent only to correct administrative information and require no physical work) are excluded from these measures.

FOCs for "disconnect ASRs" are also excluded because a response to these service requests is not required by competitors, in the normal course of business. Including disconnect ASRs in the ordering metrics would skew the results.

JIP-SA-4 ON TIME PERFORMANCE TO FOC DUE DATE

Problems to be addressed: The FOC Due Date is used to coordinate ILEC staff, competitor staff, end-user customer staff, and when required, third-party suppliers such as

equipment vendors. Therefore, it is essential that the ILEC meet this date. ILEC performance in this area is very inconsistent, however, and the due date is often missed.

ILECs can and do take advantage of Customer Not Ready (CNR) situations by counting CNRs as though the ILEC has met the proposed installation date when, in reality, the ILEC technician may not have shown up for the appointment, or may have failed to follow instructions as to whom to meet and where. The net result is that the customer's service is not delivered when expected, causing customer frustration and dissatisfaction with the competitor.

Business Impact: A missed installation means that service will not be available for a particular end-user customer. If the ILEC does not provision the service on the FOC Due Date, the end-user customer may suffer from an inability to meet its operation's needs, and blame the competitor. The competitor is left to make new arrangements with each of the parties involved with installing the service, causing greater costs for all, as well as generating customer dissatisfaction. Moreover, the end result may be (and has been) that the customer may decide to cancel service with the requesting competitor and go to another carrier—CLEC or ILEC.

Competitors are often required to provide their business and institutional customers with Service Level Agreements (SLAs) requiring payment of significant penalties to the end-user customer if service is not installed by the promised due date. Likely because the ILECs are dominant in the special services market, business customers report that ILECs rarely, if ever, provide such guarantees with associated penalties.

ILECs have used CNRs as way to absolve themselves of any responsibility for a missed installation—even when the ILEC's technician caused the delay. This sends a signal to the business end-user customer that the blame for the failed installation does not belong with the ILEC.

Proposed Measurement as a Solution: This metric measures the percentage of circuits that are completed on or before the due date. Under the proposed standards, the ILEC is held accountable for meeting its offered due date more than 98% of the time. Because the due date has been previously confirmed by the ILEC, the date should be met nearly 100% of the time.

The business rules for the metric are defined so that the ILECs are held responsible for completing all circuit installations on an ASR before being credited for meeting the installation due date. This prevents the ILEC from claiming that it met an installation due date by meeting the deadline for one circuit on an ASR that includes multiple circuits. The business rules also permit the ILEC to take credit for meeting the due date in a CNR situation only when that CNR is verified (*i.e.*, confirmed by the competitor) as being beyond the incumbent's control.

The measure includes a diagnostic OTP "Without" consideration of CNRs because it is critical that competitors and business users are able to ascertain the ILEC's performance

for circuits that were actually installed on time. Including circuits that have not been installed for CNR reasons would skew the results for this diagnostic.

Reason not burdensome: ILECs already know and provide information regarding the FOC Due Date and the installation completion date. All ILECs use some type of CNR code in their order tracking system and some ILECs already provide data on CNR designations to competitors. Therefore, it should be easy to manipulate this information to provide reporting for on-time performance that either includes or excludes any instances where a CNR code is present.

JIP-SA-5 DAYS LATE:

Problems to be addressed: End-user customers expect that when a Due Date is missed, every effort will be made to recover promptly and to get the service installed as quickly as possible. While the ILEC may miss an installation due date, there is no guarantee that the facilities will be installed the next day or even the next week after such a miss. Competitors have no assurance that the ILEC will assign a past-due circuit the same priority as other circuits for which the FOC Due Date has not yet passed.

Business impact: Every day that an installation is late can mean lost revenue or business for the end-user customer; end-users' dissatisfaction with competitors increases significantly each additional day the circuit is late.

Proposed measurement as a solution: The Days Late measure captures the range of delays for those circuits that are not completed on the FOC Due Date and for which there is no verifiable CNR. The metric measures completed installations only and the proposed standard offers ILECs the flexibility to be, on average, up to 2.99 days late. The Days Late distribution diagnostic details the number of days that an installation is delayed. A second diagnostic, "Average Days Late Due to Lack of ILEC Facilities" provides data critical to root cause analysis to determine whether the ILEC is providing access to its facilities in a timely and nondiscriminatory manner. This diagnostic can also be compared to the related UNE measure to determine whether the ILEC is discriminating in its provision of UNEs as compared to special access.

Reason not burdensome: The data required to produce this measure, and these specific breakouts, do not include any special requirements. This information can be derived from data already maintained by the ILECs.

JIP-SA-6 AVERAGE INTERVALS – REQUESTED/OFFERED/INSTALLATION:

Problem to be addressed: Special access service delivery has deteriorated over time. Offered installation date intervals are getting longer and actual installation intervals have

increased. ILECs do not provide reports for this metric, making it almost impossible for competitors to determine the magnitude of the increased provisioning interval situation.

Business impact: Every business needs to be aware of macro service levels. This measure captures the three important aspects of the provisioning interval triangle: On average, what is being requested, what is being offered, and how long it actually takes to install the service. This data is needed to identify excessive provisioning intervals and to help direct the parties' efforts where specific action is required.

Proposed measurement as a solution: The submission of ILEC reports that detail the average interval of customer requested due date, the ILEC average offered due date and the average time it took the ILEC to complete the installation, will enable early detection of any erosion in ILEC provisioning. Once these measures are established, the goal is to have the customer requested interval, the ILEC offered interval and the actual installation interval be the same.

Reason not burdensome: The data points required to produce this measure exist today in the ILEC ordering/provisioning system: (1) ASR Sent Date, (2) Requested Due Date, (3) FOC Due Date, and (4) ILEC Completion Date.

JIP-SA-7 PAST DUE CIRCUITS

Problem to be addressed: Competitors' experience demonstrates that past due circuits can escalate quickly into a major problem for both competitors and ILECs. ILECs currently do not measure and report delays for past due circuits. Therefore, the ILECs have no incentive to prioritize completion of missed circuits because they already have been penalized by having to credit the competitor's bill for missing the original due date. No data currently is captured to determine the frequency with which the ILEC fails to install circuits by their FOC Due Date or the interval between the FOC Due Date and the actual installation date. When a FOC Due Date has passed, and a circuit has yet to be installed, the magnitude of the delay is not currently captured; therefore, once a circuit installation is late, there is at present no incentive for the ILEC to expedite its completion.

Business impact: Quality customer service dictates that when a carrier misses an installation due date, the customer's installation will be immediately rescheduled. Moreover, competitors are often forced to pay SLA penalties to customers. The ILEC incurs no penalty and suffers no business consequences for poor performance. Instead, the affected competitor must try and save its relationship with the end-user customer. Further, while business customers might readily acknowledge that the delay is the result of ILEC poor performance, they are less inclined the next time they need facilities to work with a competitor who was unable to deliver the promised results.

Proposed Measurement as a Solution: The JIP-SA-4 On Time Performance to FOC Due Date and JIP-SA-5 Days Late measures are based on circuits that are actually completed. JIP-SA-7 provides a snapshot of circuits for which the FOC Due Date has

passed, but installation still has not been completed as of the end of the reporting period. It is critical that competitors have a means of monitoring uncompleted orders in order to assess the overall impact on their end-user customers.

The goal for the information derived from this metric is to provide ILECs with an incentive to install already late facilities as quickly as possible after the missed installation date, when the miss was the ILEC's fault. Today, the ILECs do not treat competitor-ordered circuits with a missed due date as a priority.

This metric looks at incomplete past due circuits where a FOC with a due date has been received. The metric also provides information regarding the source of the problem for the missed installation. As such, there is a diagnostic detailing the percentage of past due circuits that are a result of competitor reasons. Under the proposed standard for this metric, fewer than 3% of the total circuits should be more than 5 days past due for ILEC reasons.

The metric also includes a diagnostic for past due circuits identified with "no facilities" so that an analysis can be made and ILEC "no facilities" responses can be managed proactively by the competitor.

Reason not burdensome: Results are separated between FOC Due Dates held due to competitor reasons and FOC Due Dates held for ILEC reasons, with a separate breakdown of those held due to a lack of ILEC facilities. These are normal status codes that should be available in any large ILEC provisioning system.

JIP-SA-8 NEW INSTALLATION TROUBLE REPORT RATE:

Problems to be addressed: New installation troubles, while not infrequent, are particularly problematic for competitors. Once special access service is installed, business end-user customers (especially those already frustrated by a long wait for the installation in the first place) expect and need the service to function trouble-free. They certainly should not experience problems in the first 30 days of such service.

Business impact: Because installations can occur under harried circumstances (especially when a customer has been rescheduled as a result of a missed appointment), these early "troubles" are most often the result of poor quality or incomplete work done on the installation. The end-user customer naturally blames the party it has contracted with for the service--the competitor.

Proposed measurement as a solution: This measure assesses the quality and completeness of provisioning work performed by the ILEC by identifying the number of new circuits that fail within the first 30 days of service because of poor installation quality or incomplete installation work. Additionally, since there is no uniformity in the way in which ILECs handle new installation troubles (e.g., some maintain new installations in the

provisioning center for a period of time, while others immediately refer such problems to their maintenance organization), reporting may highlight the tendency for competing carriers to get caught between ILEC departments.

Reason not burdensome: Trouble reporting on new circuit installations is a normal industry practice and should not impose any additional burden on the ILECs. The proposal seeks only to standardize industry practice.

MAINTENANCE & REPAIR:

Maintenance and Repair metrics measure the quality of the circuits provisioned by the ILEC as well as their performance in maintaining installed circuits.

General Business Rules or Exclusions:

Troubles caused by competitors, CPE (Customer Premises Equipment), or other customer caused troubles are excluded from these measures, as well as those troubles cancelled at the competitor's request.

"Found OK" and "Test OK" trouble codes are included in all M&R metrics.

Administrative and informational types of trouble tickets are also excluded.

JIP-SA-9 FAILURE RATE:

Problem to be addressed: Business end-user customers use special access circuits predominantly for voice and high-speed data traffic. Their expectation and requirement, therefore, is that the circuits will rarely fail.

Business impact: Circuit troubles or down time often mean interruption to the business end-user's day-to-day operations, ultimately resulting in lost revenue for the end-user customer. Because competitors depend on the reliability of ILEC facilities for special access services, the quality of the ILEC maintenance and repair service is critical. Further, when there is a problem with a circuit, business end-user customers blame the competitor and expect the competitor to pay penalties under the terms of SLAs, regardless of whether the trouble was actually in the ILEC facilities or otherwise caused by the ILEC.

Proposed measurement as a solution: The Failure Rate metric will enable competitors to monitor the quality of all the circuits installed by the ILEC. This measurement reports on the number of troubles received by the ILEC during one month as a percentage of the number of ILEC circuits in service. The reported result is annualized to provide a snapshot of failed ILEC circuits experienced by competitors on a yearly basis. Although a

Trouble Report rate of 2% in a month may not appear to be significant, when projected as an annualized rate a failure rate of 24% of installed circuits within a year's time it can jeopardize competitors' ability to win new business. An annualized rate also reveals both the potential impact failures have on the competitor's entire customer base (with a failure rate of 1 in 4 circuits provisioned, it is likely that a very large percentage of a competitor's end-user customers will experience a failure of some type every year), and the likelihood that end-user customers will experience repeated failures.

Reason why not burdensome: This metric is a standard industry measurement and ILECs routinely report this information today. The BOCs strive to deliver network availability for voice and data customers of 99.999%. At a 10% annual failure rate and a two-hour Mean Time to Repair Rate per ticket for a DS1, the JCIG proposal will enable a network availability of 99.998%.

JIP-SA-10 MEAN TIME TO RESTORE:

Problem to be addressed: After a circuit goes down, end-user customers expect their service provider to restore the failed circuit in the shortest amount of time. A response time that exceeds the end-user customer's expectations will be perceived as poor performance on the part of the competitor. This metric will establish consistent ILEC repair interval parameters that will allow competitors to manage their end-user customer's repair expectations.

Business impact: Business end-user customers depend on the reliability of the ILEC-provided circuit for transmitting voice and data traffic. Circuit outages are disruptive and have the potential to be costly for the end-user in terms of lost revenue. The mere perception that competitors provide poor or inadequate customer service negatively affects the competitor's ability to acquire and maintain business end-user customers.

Proposed measurement as a solution: ILEC promptness in restoring circuits to normal operating levels, when a problem or trouble is referred to them, is essential to maintaining good customer service and relations. The calculation for this metric is based on the elapsed time from the submission of a trouble report to the ILEC, to the time the ILEC reports the trouble has been resolved. The expectation is that a DS0 or DS1 will be restored in less than two hours on average and a DS3 circuit will be restored within one hour or less on average. A diagnostic component is included in this metric that captures the percentage of out of service troubles exceeding 24 hours. Out of service troubles lasting longer than 24 hours can have a catastrophic impact on the operations of business end-user customers. ILEC repair delays also damage the competitor's service delivery reputation. An additional diagnostic is included in this metric that captures the number of trouble reports that are coded by the ILECs as "Found OK/Test OK." This is particularly

important since the increase in the use of such codes is likely to lower overall MTTR and may reflect an attempt to mask actual performance.

Repair delays caused by the end user, equipment vendor, or the competitor, such as no access to the customer premises are subtracted from the total repair time.

Reason not burdensome: Mean Time to Restore is a standard industry measure and ILECs routinely report this information today.

JIP-SA-11 REPEAT TROUBLE REPORT RATE:

Problem to be addressed: A source of significant annoyance and dissatisfaction for special access end-user customers is the occurrence of multiple circuit troubles or failures within 30 days of a previously closed trouble report. End-user customers perceive such repeat troubles as evidence of poor workmanship, or poor facility quality on the part of the competitor.

Business impact: Multiple circuit troubles or outages within a short time period result in significant customer annoyance and dissatisfaction. As stated above, business end-user customers view the experience as evidence that competitors provide poor workmanship or poor quality facilities. Even if a business end-user customer acknowledges that the ILEC is the source of the problem, the end-user often believes the job would have been done better and faster by the ILEC if the end user had not switched to a competitor's service.

Proposed measurement as a solution: This metric measures the quality of the repair work performed by the ILEC. It identifies the number of repeat circuit trouble reports that may be caused by facility quality problems, or incomplete or poor quality repair work performed by the ILEC.

Reason not burdensome: Repeat trouble reporting is standard industry practice and should not present any undue burden. Including this metric will standardize the industry process.

TAB #6

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August 9, 2002

ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Suite TW-A325
Washington, D.C. 20554

Re: *Written Ex Parte Presentation, In the Matter of Performance
Measurements and Standards for Interstate Special Access
Services, CC Docket No. 01-321*

Dear Ms. Dortch:

On August 9, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Chairman Powell, urging the Commission to act immediately to adopt performance measures, performance standards, reporting requirements, and enforcement procedures to govern the provision of interstate special access services by incumbent local exchange carriers.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. §1.1206(b)(1), this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,



Ruth Milkman

Marlene H. Dortch, Secretary
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Attachment

cc: Chairman Powell
Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Christopher Libertelli
Jordan Goldstein
Matthew Brill
Samuel Feder
William Maher
Jeffrey Carlisle
Michelle Carey
John Stanley
Uzoma Onyeije
Renee Crittendon
Mark Stone
Qualex International

August 9, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth St., S.W., Suite TW-A325
Washington, DC 20554

Re: Joint Competitive Industry Group Proposal Regarding Performance
Metrics, Standards and Reporting for Interstate Special Access Services

Dear Chairman Powell:

The undersigned competitive telecommunications carriers, trade associations, and user groups (collectively, the "Joint Competitive Industry Group" or "JCIG") urge the Commission to act immediately to adopt performance measures, performance standards, reporting requirements, and enforcement procedures to govern the provision of interstate special access services by incumbent local exchange carriers ("LECs"). Improving the provisioning of special access services, and deterring discrimination in the provision of these services, is a matter of urgent necessity for JCIG members because both end users as well as competitive carriers must rely on incumbent LECs to provide the last mile facilities that connect end user locations to the worldwide telecommunications networks.

Although the dependence of competitive carriers on incumbent LEC special access services is well-known to the Commission, the participation of business customers in the JCIG is especially noteworthy. Special access services are used extensively by many business customers. These services provide businesses with access to their corporate data networks and the Internet. Special access services are also utilized at thousands of call centers deployed in the United States. The reliable, timely provisioning of these services is central to the internal and external communications of large and small businesses throughout the United States.

Since release of the Commission's Notice of Proposed Rulemaking in this proceeding, the Joint Competitive Industry Group has devoted considerable time and effort to the development of a unified set of performance metrics, standards, and reporting requirements, and a comprehensive enforcement plan for special access services. The JCIG proposal was filed on January 22, 2002, and JCIG subsequently supplemented the record with additional detail and background information requested by the staff on June 18, 2002. With the exception of certain incumbent LECs, commenters in this proceeding are virtually unanimous in supporting adoption of the provisioning and reporting requirements as an effective, non-burdensome method of significantly improving the provisioning of incumbent-LEC provided special access services. Because

of the work of the JCIG, there is also a remarkable consensus on the details of these requirements.

The record in this proceeding is replete with un rebutted evidence of the incumbent LECs' continued failure to provide interstate special access service in a timely, non-discriminatory manner. To date, efforts to negotiate with the incumbent LECs to improve their performance have not been successful. Unless the FCC acts, carriers and end user customers will continue to lack any practical, effective means to correct the incumbents' dismal performance. Not surprisingly, no one has challenged the Commission's plenary authority to adopt and impose requirements that will improve the incumbent LECs' provision of interstate special access services. These services are at the core of the Commission's jurisdictional authority and have been an integral part of the agency's interstate access regulatory scheme for over 20 years. Enforcement of the statutory requirements that special access be provisioned in a reasonable and not unreasonably discriminatory manner, however, is extremely difficult absent Commission action in this rulemaking. Experience has shown that formal complaints alleging that an incumbent LEC is acting unreasonably in violation of Section 201(b) have been substantially hindered by the lack of an established standard for what constitutes reasonable performance. Discrimination is also extremely difficult to show in the absence of published data that have been collected in a standardized manner and that are subject to audit to ensure accuracy.

Nor should the pendency of other common carrier proceedings delay action in this docket. Special access provisioning requirements can be adopted on a stand-alone basis without prejudging or otherwise affecting pending local competition proceedings, such as the *Broadband Non-dominance*, *UNE Triennial Review*, and *ILEC Broadband Framework* proceedings. Special access services are simply the dedicated links used to connect end user customers to the networks of competitive carriers. The provision of these interstate services preceded, and has largely been unaffected by, the Telecommunications Act of 1996, and the development of new broadband services, such as DSL. In addition, in the *Special Access Provisioning* proceeding, unlike the *UNE Metrics* proceeding, commenters (aside from the incumbent LECs) are virtually unanimous in their support not only for the need for performance requirements, but also for the specific comprehensive set of performance requirements proposed by the JCIG. Moreover, state commissions have affirmatively looked to the FCC for action on special access provisioning, so that the Commission need not be concerned that its actions will affect concurrent state commission efforts.¹

In light of the number of Section 271 applications that have been granted and that are currently pending, adoption of special access metrics and corresponding reporting requirements is more critical than ever. As the BOCs have gained approval to offer originating in-region interLATA services in additional states, they increasingly view

¹ See Letter from Maureen O. Helmer, Chairman, New York Public Service Commission, to Chairman Michael K. Powell, May 22, 2001.

interexchange carriers not as customers, but as competitors. As long as the BOCs dominate the provision of special access services, as they do today, it is essential that performance metrics be adopted to counter these anticompetitive incentives.

The Commission has before it a strong record that establishes the problems faced by consumers of special access and that proposes a unified solution. Therefore, the Joint Competitive Industry Group urges the Commission to act immediately to adopt the JCIG's special access performance measures, standards, and reporting requirements, as well as its proposed enforcement plan.

Sincerely,

The Joint Competitive Industry Group

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Keller & Heckman
American Petroleum Institute

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Association for Local Telecommunications Services

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Audrey Wright
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Senior Vice President, External Affairs
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Chairman Michael K. Powell
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cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Christopher Libertelli
Jordan Goldstein
Matthew Brill
Samuel Feder
William Maher
Jeffrey Carlisle
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John Stanley
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